

PT 96-23

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

GOTTLIEB MEMORIAL HOSPITAL)		
Applicant)		
)	Docket #s	91-16-0962
)		92-16-1486
)		
v.)		
)	Parcel Index #	12-35-302-035
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. James A. Hullihan appeared on behalf of Gottlieb Memorial Hospital (hereinafter referred to as the "Applicant").

Synopsis:

The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 18, 1995, to determine whether or not Cook County Parcel No. 12-35-302-035 qualified for exemption from real estate tax for the 1991 and 1992 assessment years.

Mr. Frank McHugh, director of financial operations of the applicant and Ms. Leslie Cole, director of the child care center of the applicant, were present and testified on behalf of the applicant.

By a letter dated December 12, 1995, the attorney for Rhodes School District 84.5 and Leyden Community High School District 212, Intervenor in this matter, withdrew the intervention of those school districts and did not appear at the hearing. (Dept. Ex. No. 6)

The issues in this matter include first, whether the applicant was the owner of this parcel during the 1991 and 1992 assessment years. The second issue is whether the applicant is a charitable organization. The last issue is

whether the day care building was being entirely used for primarily charitable purposes during the 1991 and 1992 assessment years. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel during the 1991 and 1992 assessment years. It is also determined that the applicant qualifies as a charitable organization. Finally it is determined that the applicant used the entire child care building for primarily charitable purposes during the 1991 and 1992 assessment years.

Findings of Fact:

1. On July 10, 1992, and June 15, 1993, respectively, the Cook County Board of Appeals transmitted Statements of Facts in Exemption Applications concerning this parcel for the 1991 and 1992 assessment years, to the Illinois Department of Revenue (hereinafter referred to as the "Department "). (Dept. Ex. Nos. 1 & 1C)

2. On December 21, 1992, and December 23, 1993, respectively, the Department notified the applicant that it was exempting this parcel and the buildings thereon except for 57,500 square feet of the professional building, 6,405 square feet of the day care building and 73 parking spaces, for the 1991 and 1992 assessment years. (Dept. Ex. Nos. 2 & 2A)

3. On January 18, 1993, and January 12, 1994, respectively, the applicant's attorney requested a formal hearing concerning only the denial by the Department of the exemption of 6,405 square feet of the day care building, which was the area of that building occupied by the day care center. (Dept. Ex. Nos. 3 & 3A)

4. The hearing held in this matter on December 18, 1995, was held pursuant to that request.

5. The applicant was incorporated pursuant to the General Not For Profit Corporation Act of Illinois, during 1956.

6. I take administrative notice of the fact that the Department in Docket No. 89-16-1261, which also concerned this parcel, determined that the applicant is a charitable organization. (Dept. Ex. No. 1AG)

7. The applicant acquired this parcel, and other land, by a quit claim deed dated December 28, 1988. (Dept. Ex. No. 1G)

8. The sole issue in this case then is whether the 6,405 square feet of the day care building occupied by the day care center during the 1991 and 1992 assessment years was used for primarily charitable purposes by the applicant.

9. During 1991 and 1992, the day care center play room was located in the basement of the day care building and contained 670 square feet. (Dept. Ex. No. 1M, Tr. pp. 23 & 24)

10. The remainder of the day care center's facilities were located on the first floor of the day care building and contained 5,735 square feet during those years. (Dept. Ex. No. 1M, Tr. p. 24)

11. During the middle to late 1980s the applicant determined that it was having difficulty recruiting certain types of employees, specifically, registered nurses, physical therapists, and pharmacists. As a result of an investigation of this difficulty, the applicant determined that it should build and operate a child care center. (Tr. pp. 26 & 27)

12. During 1991 and 1992, there were approximately 101 children in the day care center. Approximately 80 percent of those children were the children of the applicant's employees and 20 percent were the children of members of the community. (Appl. Ex. No. 2)

13. The children of employees of the applicant received first priority concerning admission to the day care center, during 1991 and 1992. (Tr. p. 28)

14. During the years 1991 and 1992, the applicant defined the term "employee" to include employees of Gottlieb Memorial Hospital or Gottlieb Community Health Services Corporation. (Tr. p. 30)

15. The tuition for community children was set by the applicant, during 1991 and 1992, to be competitive with other day care providers in the area. The tuition for the children of employees was set at a discounted rate during those years. (Tr. p. 39)

16. During the 1991 and 1992 assessment years, the applicant did not offer scholarships to parents of the children attending the day care center, but fees would have been waived or reduced pursuant to the applicant's community charity care program. (Tr. p. 40)

17. During 1991 and 1992, the day care center accepted children from ages six weeks to five years. (Tr. p. 44) The day care center during those years operated Monday through Friday, 6:00 A. M. to 6:00 P.M., excluding holidays. (Tr. p. 57)

18. During 1991 and 1992, the expenses of the child care center exceeded the tuition collected. For 1991, the excess of expenses over tuition was \$137,604.00 and the total tuition received was \$294,574.00. For 1992, the excess of expenses over tuition was \$137,822.00 and the total tuition received was \$323,589.00. (Appl. Ex. No. 5)

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7, exempts certain property from taxation, in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in

favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether an organization is a charitable organization, using a property for charitable purposes. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. In view of the fact that the applicant would have waived or reduced tuition fees in cases of need, pursuant to its community charity care program, I conclude that the benefits derived were available to an indefinite number of persons, charity was dispensed to all who needed and applied for it, and no obstacles were placed in the way of those seeking the benefits. Since the applicant is an Illinois Not For Profit Corporation, I conclude that the applicant has no capital, capital stock or shareholders, and does not profit from the enterprise. In view of the large annual excess of expenses over income in 1991 and 1992, I conclude that the applicant was required to pay those expenses out of its primarily charitable funds. Consequently, I conclude that the funds to operate the day care center were derived from tuition fees and public and private charity which was held in trust for the objects and purposes expressed in the charter. The primary use of the part of the child care building occupied by the child care center, I

conclude, was for charitable purposes. The applicant then, I conclude, met each of the foregoing six guidelines.

I therefore recommend that Cook County Parcel No. 12-35-302-035, be exempt from real estate taxes for the 1991 and 1992 assessment years, except for 57,500 square feet of the professional building and 73 parking spaces.

I further recommend that said 57,500 square feet of the professional building and 73 parking spaces remain on the tax rolls for the 1991 and 1992 assessment years, and that they be assessed to the applicant.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 15, 1996